

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

**PETITION FOR WAIVER**

Pursuant to Section 1.3 of the Federal Communications Commission (FCC or Commission) rules, the California Public Utilities Commission and the People of the State of California (California or CPUC), respectfully submit this petition for waiver of the Commission's new requirement that states conform their pooling trials to the Commission's national pooling rules by September 1, 2000, as directed in the Commission's March 31, 2000 *Report and Order and Further Notice of Proposed Rule Making (NRO Order)*.<sup>1</sup> Specifically, the CPUC requests that the Commission grant a waiver of this requirement so that California can continue to impose its number pooling rules until the national pooling rollout begins, at which time California would conform with the national pooling rules. According to the *NRO Order*, the national pooling rollout will begin within nine months after the national Pooling Administrator is selected.<sup>2</sup> California requests this waiver so that we can continue to implement our utilization threshold

<sup>1</sup> Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 00-104 (rel. March 31, 2000) (*NRO Order*).

<sup>2</sup> *NRO Order*, pars. 156, 168.

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requirements which have proven integral to our success in the number pooling trial in the 310 area code.<sup>3</sup>

## I. INTRODUCTION

Under § 1.3 of the Commission's rules, the Commission may exercise its discretion to waive a rule where there is "good cause" to do so. For the reasons explained below, the CPUC fully satisfies the standards for a waiver.<sup>4</sup>

The Commission is by now well aware of the critical numbering situation in California. The CPUC has been working diligently to find one or more solutions to the numbering crisis we face. One of the solutions we have employed is the establishment of number pooling trials in the 310 and 415 area codes. In addition, we have scheduled pooling trials to begin in the 714 area code in October, 2000, and in the 909 area code in December, 2000. In conjunction with setting up the 310 number pooling trial, the CPUC established a set of rules. Primary among those rules is the imposition of a 75% utilization threshold on all carriers, both pooling *and* non-pooling carriers, in the 310 NPA.

Our requirement of a 75% utilization threshold (or fill rate) before a pooling carrier can seek an additional 1,000 block in the pooling NPA has proven successful in our 310 pooling trial by increasing the usage of numbers already held by carriers, more closely aligning the number of 1,000 blocks allocated to carriers with carrier needs, and delaying numbering exhaust. Through

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<sup>3</sup> We note that we have also filed with the FCC a Petition for Reconsideration on July 17, 2000, on this issue asking the FCC to modify the *NRO Order* to require state conformance with FCC numbering pooling rules concurrent with the start of the national pooling rollout.

<sup>4</sup> "Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation serves the public interest." *In the Matter of Implementation of the Pay Telephone Reclassification Order and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128. Order at 12, par. 23 (rel. April 4, 1997), citing *Northwest Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WALT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); See also *in the Matter of Implementation of the Pay Telephone Reclassification Order and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order at 11-12, par. 23 (rel. April 15, 1997).

this mechanism, we have been able to reduce the number of 1,000 blocks assigned and still get the carriers the number resources they actually need. The result has been a full year's extension of the life of the 310 area code.

The Commission has rightfully recognized the importance and enormous cost savings of delaying area code exhaust. We urge the Commission not to reverse the significant headway California has made through our pooling trials and to grant the CPUC the requested waiver. To require California to conform by September 1, 2000 with the national pooling rules for the national pooling rollout which may not begin for another eighteen months to two years, would be premature and a detrimental step backwards in delaying the exhaust of area codes.

**A. The FCC's New Requirement For Which Waiver Is Sought**

Among the requirements set forth in the *NRO Order*, the Commission required that state commissions conform their pooling trials with the national "framework" by September 1, 2000. Compliance with the national "framework" would mean discontinuing state-mandated utilization rates and following federal sequential numbering rules.<sup>5</sup>

The Commission's national pooling rules, at this time, do not require utilization thresholds for pooling carriers before they can get numbers from a pooling Numbering Plan Area (NPA). In the *NRO Order*, the FCC adopted in concept a utilization threshold to be applied to non-pooling carriers seeking growth NXX codes.<sup>6</sup> However, the Commission declined to adopt a specific threshold, and instead issued a request for further comments on what the threshold level should

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<sup>5</sup> *Responses to Questions in the Numbering Resource Optimization Proceeding*, CC Docket No. 99-200, July 12, 2000 (Clarification Notice).

<sup>6</sup> *NRO Order*, par. 103

be.<sup>7</sup> In addition, the Commission, at this time, has declined to adopt utilization thresholds for pooling carriers, because, the FCC reasoned, pooling carriers are required to donate to the pool uncontaminated and lightly contaminated thousands-blocks (*i.e.*, with ten percent or less contamination) to initially stock the pool.<sup>8</sup> This requirement, however, which is contained in the Industry Numbering Committee (INC) Number Pooling guidelines, mandates only that pooling carriers must donate 1,000 blocks to the pool on the Block Donation Date, at the start of the pooling trial. The INC Pooling Guidelines do *not* require carriers to donate blocks to a number pool after the initial donation has been completed. In fact, Section 8.4.1 provides that carriers “will *not* be required to donate contaminated thousands-blocks for ongoing replenishment of the industry inventory pool.” (emphasis added.)

Moreover, to obtain new numbers, these pooling carriers must demonstrate the requisite “months to exhaust” (MTE) forecast. This “months to exhaust” calculation relies upon a carrier’s *subjective* projection of its future numbering needs. The Commission, however, left open the possibility that it might “revisit the question of whether *all* carriers should be subject to meeting a utilization threshold to obtain growth numbering resources if we find that such thresholds increase numbering use efficiency.”<sup>9</sup> Given that the Commission’s new number pooling requirements are based on a carrier’s subjective projection of its numbering needs and a carrier’s willingness to donate blocks to a number pool after the initiation of a numbering pool, we are hopeful that the Commission will, in fact, revisit the question of applying the utilization threshold to all carriers and realize that utilization thresholds will increase numbering use efficiency.

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<sup>7</sup> *NRO Order*, pars. 103, 248.

<sup>8</sup> *NRO Order*, par. 156.

<sup>9</sup> *NRO Order*, par. 103 (emphasis added).

**B. California's number pooling rules and successful implementation**

California's number pooling rules include the requirement that both pooling and non-pooling carriers employ sequential numbering and meet a 75% utilization threshold for each 1,000 block growth code before seeking an additional block or an additional NXX code in the pooling NPA. Further, we recently issued an order requiring the CPUC to employ the Commission's federal sequential numbering rules.

In California, the application of a 75% utilization threshold to pooling carriers has contributed substantially to the success of the 1,000-block number pooling trial in the 310 area code pooling trial, which began on March 18, 2000. The 75% utilization threshold has ensured that only those blocks that are actually needed are assigned and therefore conserves numbers in the 310 area code.

Our experience in the 310 area code pooling trial revealed that carriers forecast the need for far more numbers than they actually qualify for under the CPUC's utilization requirements. Prior to the opening of the 310 pool, each carrier was required to submit to the Pooling Administrator (PA) a forecast of its anticipated demand for 1,000-blocks for 2000 and 2001. From those submissions, the PA constructed an aggregate forecast of demand for 1,000-blocks, by rate center and by calendar quarter, for the 310 pool. In the first quarter, carriers projected demand for 225 thousand-blocks but qualified for and obtained only 73 blocks. In the second quarter, carriers had projected an aggregate demand of 199 thousand-blocks, but qualified for and obtained only 29 blocks. Averaging the total projections and the total take rate for the two quarters, we see that carriers forecasted the need for 424 thousand-blocks, but have drawn only 102 blocks.

As stated previously, the Commission's new requirements allow pooling carriers to acquire new numbers by submitting a "months to exhaust" calculation based upon a carrier's subjective projection of its future numbering needs. However, as shown by our 310 numbering pool, these carrier projections are far from accurate. If we had indeed assigned the blocks in the 310 area code based on the carrier's subjective projection of its future numbering needs, the number of blocks assigned would possibly have tripled or quadrupled. This would have required the Pooling Administrator to open prematurely several NXX codes to replenish the rate center pool to meet the carrier's request.

No carrier has complained to us that the 75% threshold is unreasonable or unachievable. If a carrier meets its 75% threshold, that carrier can quickly obtain and use immediately a new 1,000-block of numbers – that is one of the benefits of number pooling. With number pooling it can take as little as three weeks from the time a carrier requests a 1,000-block from the PA until number can be assigned to customers. Moreover, this time frame can even be shortened to less than one week. The 75% utilization rate also is used in Maine, New Hampshire, Massachusetts, and New York.

As we have seen previously, relying upon a carrier's willingness to donate numbers and subjective standards invariably leads to inefficient allocation of numbering resources. As both the CPUC and Maine Public Utilities Commission (MPUC) provided in our respective Petitions for Reconsideration, the Commission should not assume that carriers will only ask for the resources they need and give back any that they do not need. Subjective criteria from carriers does not impose adequate discipline on a carrier's ability to stockpile numbers for which it has no immediate need. As the MPUC stated in its Petition for Reconsideration, objective criteria, such

as utilization rates, eliminates the dangers associated with subjective, overly-optimistic projections of growth.

By waiving the requirement of state pooling rules to conform with the national pooling rules by September 1, 2000, the Commission will also benefit from state experiences and the data on the efficacy of utilization thresholds the states will gather. As we noted earlier, the Commission at a later date will establish rules for utilization thresholds for nonpooling carriers and possibly, and we urge the Commission to do so, for pooling carriers if the Commission finds that such thresholds significantly increase number use efficiency.<sup>10</sup> Waiving this rule would allow California to continue its success in number pooling and delaying numbering exhaust as well as provide the Commission with useful data and experience to draw from. Finally, by leaving the existing state utilization thresholds in place until the national pooling roll-out begins, carriers will be spared the confusion caused by switching now, then switching back later if the FCC changes its policy. This Petition for Waiver would not affect California's ability to conform with the Commission's utilization threshold once it is adopted and the national roll-out begins.

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<sup>10</sup> *NRO Order*, par. 142.

## II. CONCLUSION

For all of the reasons stated, the CPUC strongly urges the Commission not to reverse the headway California has made through our pooling trials and grant our requested waiver of the Commission's requirement that state commissions conform their pooling trials with the national pooling rules by September 1, 2000.

Respectfully submitted,

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By: /s/ HELEN M. MICKIEWICZ

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Attorneys for the  
Public Utilities Commission  
State Of California

August 4, 2000



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document entitled “**PETITION FOR WAIVER**” upon all known parties of record by mailing, by first-class mail, a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 4th day of August, 2000.

/s/      HELEN M. MICKIEWICZ

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HELEN M. MICKIEWICZ